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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/685,186	10/14/2003	Anthony Robert Knoerzer	CFLAY.00193	4198
22858	7590	10/03/2005	EXAMINER	
CARSTENS YEE & CAHOON, LLP			CHAN, SING P	
P O BOX 802334			ART UNIT	PAPER NUMBER
DALLAS, TX 75380			1734	

DATE MAILED: 10/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/685,186	KNOERZER ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Sing P. Chan	1734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on \_\_\_\_\_.  
2a)  This action is **FINAL**.                    2b)  This action is non-final.  
3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-27 is/are pending in the application.  
4a) Of the above claim(s) 1-22 is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 23-27 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 14 October 2003 is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
    Paper No(s)/Mail Date \_\_\_\_\_.  
4)  Interview Summary (PTO-413)  
    Paper No(s)/Mail Date. \_\_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_.  
\_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 23, 24, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ray, III et al (U.S. 4,308,679) in view of Miller et al (U.S. 5,127,743), and Kon et al (JP 62-62736).

Ray, III et al discloses a laminated container structure. The laminated structure includes an inner wall of a paperboard or cardboard material and an outer wall of thin pliant material, which are considered to be flexible films, peelable panel, i.e. a strip, is formed in the outer wall material with slits or perforations completely through the outer layer, an adhesive layer between the outer and inner wall for bonding the outer wall material to the inner wall, and a coating a release agent or coating onto the rear surface of the strip to allow for easy peeling without injury to the inner wall material. (Col 4, lines 47-68) Ray, III et al is silent as to the feeding the first and second film into a laminator, extruding a molten plastic layer or adhesive layer between the first and second films, and slitting takes place within 1-24 inches from the pressing step. However, the feeding the first and second film into a laminator and extruding a molten plastic layer or adhesive layer between the first and second films is well known and

conventional as shown for example by Miller et al. Miller et al discloses a method of forming packaging material. The method includes providing a first and second web or film, feeding the films or webs into the laminator, extruding the adhesive between the films, and laminating the two films together. (Col 4, line 51 to Col 5, line 15 and Figure 6)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to feed the first and second film into a laminator and extruding a molten plastic layer or adhesive layer between the first and second films as disclosed by Miller et al in the method of Ray, III et al to provide a method of forming a packaging material quickly and efficiently. (Col 2, lines 33-35) Ray, III et al as modified by Miller et al does not disclose the distance from slitting step to form a strip occurs within 1-24 inches from the pressing step. However, Kon et al discloses a method of forming laminated film, which provide a slitting step or slit wheel just before lamination, (See English Abstract of JP 62-62736) and furthermore, determination of the specific distance between the slitting and pressing steps would have been well within the realm of routine experimentation to one of ordinary skill in the art at the time of the invention in view of the teaching of Kon et al that recognizes that the location, i.e. just before lamination, of the slitting step is ripe for optimization.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to optimize this parameter in order to provide accurate placement of the strip, which improving the uniformity of the final products in the method of Ray, III et al as modified by Miller et al.

2. Claims 25 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ray, III et al (U.S. 4,308,679) in view of Miller et al (U.S. 5,127,743) and Kon et al (JP 62-62736) and as applied to claim 23 above, and further in view of Walker (U.S. 3,879,246).

Ray, III et al as modified above is silent as to applying the adhesive to first web, outer wall material, and the release coating onto the second web, inner wall material. However, applying adhesive to the strip is well known and conventional as shown for example by Walker. Walker discloses a method for laminating a foil strip. The method includes applying hot melt adhesive to the foil strip (Col 7, lines 4-13) prior to slitting into strips and would require the release coating to be placed on the second web to allow removal, which is considered to be equivalent.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide adhesive on the first web or attachment strip and release coating on the second web or vice versa as disclosed by Walker in the method of Ray, III et al as modified by the combination of references because they are equivalent.

#### ***Response to Arguments***

3. Applicant's arguments filed April 11, 2005 have been fully considered but they are not persuasive.

4. In response to applicant's argument of Miller teach away from the claimed invention. The examiner disagrees with the applicant. Miller teaches the strip is attached to either the inner or exterior package wall (Col 6, lines 1-15) and if the strip is attached to the exterior package wall, it would be on the exterior of the packaging and

furthermore, Miller teaches a pull tab and perforation combination (Col 5, lines 12-15) and release coating on the promotional piece (Col 5, lines 26-32) to allow easy removing from between the layers and also allow for easy separation of the package wall and strip and would not damage the remaining package wall. Therefore, Miller does not teach away from Ray. The combination of Ray, III et al and Miller discloses the instant invention.

5. In response to applicant's argument none of the references discloses the upper layer of a laminate film be completely cut in two laterally displaced locations such that a strip of the upper layer be completely detached on either side form the rest of the upper layer prior to entering the laminator. However, the claim of instant application does not require the upper layer of a laminate film be completely cut in two laterally displaced locations such that a strip of the upper layer be completely detached on either side form the rest of the upper layer prior to entering the laminator. The claim required "slitting completely through the first film at two laterally displaced locations to from a strip," which only required slitting through the first layer and form a strip and does not require completely detached strip of layer of laminate film, which the perforations of Ray's packaging material has provided that teaching.

6. In response to applicant's argument of Kon does not teach complete cuts in the film to create a detached film strip. The claim as recited does not require the strip to be detached and only required the cut to be completely through the first layer and Kon does recite such teaching.

7. In response to applicant's argument of the examiner is in error to content "the slitting and laminating steps would perform equally well at any distan[ce];" the examiner did not cite contention in the previous office action but cited the distance is well within the realm of routine experimentation to one of ordinary skill in the art for optimization and would be obvious to optimize this parameter in order to provide accurate placement of the strip to improve the uniformity of the final products.

8. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sing P. Chan whose telephone number is 571-272-1225. The examiner can normally be reached on Monday-Thursday 7:30AM-11:00AM and 12:00PM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher A. Fiorilla can be reached on 571-272-1187. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Chan Sing P*

SPC

*CF*

CHRIS FIORILLA  
SUPERVISORY PATENT EXAMINER

*Art 1734*